

TOMAS CLEMENTE GONZALEZ

APRIL 23, 1958.—Committed to the Committee of the Whole House and ordered
to be printed

Mr. LANE, from the Committee on the Judiciary, submitted the
following

R E P O R T

[To accompany H. R. 2934]

The Committee on the Judiciary, to whom was referred the bill
(H. R. 2934) for the relief of Tomas Clemente Gonzalez, having con-
sidered the same, report favorably thereon with an amendment and
recommend that the bill do pass.

The amendment is as follows:

Page 1, line 5: Strike "\$5,000" and insert "\$500".

PURPOSE

The purpose of the proposed legislation, amended in accordance
with the recommendations of the committee, is to pay Tomas Cle-
mente Gonzalez \$500 in full settlement of his claims against the United
States based on an accident on March 24, 1942, when he was injured
when struck by a United States Army truck.

STATEMENT

On March 24, 1942, at about 3:30 in the afternoon, Tomas Cle-
mente Gonzalez was walking down a road described as Highway No. 2,
Km. 7-6, Guaynabo, P. R., when he was struck by an Army vehicle.
The road was wet and slippery at the time, and the truck was one of a
series of vehicles moving down the road. Apparently it skidded in
attempting to pass another vehicle, and struck Tomas Clemente
Gonzalez, then a boy of 15.

The nature and extent of the injuries suffered by the claimant are
points concerning which the records of the Army and the claims of
Tomas Clemente Gonzalez do not entirely agree. The medical
records of the Bayamon District Hospital show that Tomas Clemente
Gonzalez was admitted to that hospital on March 24, 1942, the date

of the accident. His injuries were diagnosed as "contused lacerated wound of left ankle" and "multiple contusions of left leg." No operation was performed and the patient was discharged on May 16, 1942, as "recovered." The medical certificate from the hospital contains the following information:

The patient continued treatment at the outpatient department. On August 9, 1943, the patient was seen by Dr. Sabatelle. Exact words of the physician follow: "X-ray shows an arthritis of the ankle joint at the articulation of the fibula. There is limitation of motion in the ankle joint. The primary condition at present time is an ulcer at the outer side of the ankle."

The patient was seen for the last time on October 1, 1943.

The patient has improved of his condition.

The medical director of the Bayamon District Hospital certified as follows on July 26, 1957:

This is to certify that in the medical records of Mr. Tomas Clemente Gonzalez there is no indication of physical disability.

This committee finds from the evidence presented to it that it is established that Tomas Clemente Gonzalez was struck by an Army vehicle, but that the hospital records do not establish that the injuries suffered were permanent in nature. He did not incur any expense for his hospitalization for that was paid for by the Government of Puerto Rico. Accordingly, this committee has determined to follow the recommendation of the Department of the Army that the amount provided for in the bill be amended to the amount of \$500. Accordingly, this committee recommends that the bill, amended to provide for the payment of \$500, be favorably considered.

DEPARTMENT OF THE ARMY,
Washington, D. C., October 10, 1957.

HON. EMANUEL CELLER,
*Chairman, Committee on the Judiciary,
House of Representatives.*

DEAR MR. CHAIRMAN: Reference is made to your request to the Secretary of the Army for the views of the Department of the Army with respect to H. R. 2934, 85th Congress, a bill for the relief of Tomas Clemente Gonzalez.

This bill provides as follows:

"That the Secretary of the Treasury is authorized and directed to pay, out of any money in the Treasury not otherwise appropriated, the sum of \$5,000 to Tomas Clemente Gonzalez, who was injured on March 24, 1942, when struck in Guaynabo, Puerto Rico, by a United States Army truck. The payment of such sum shall be in full settlement of all claims against the United States on account of such accident: *Provided*, That no part of the amount appropriated in this Act shall be paid or delivered to or received by any agent or attorney on account of services rendered in connection with this claim and the same shall be unlawful, any contract to the contrary notwithstanding. Any person violating the provisions of this Act shall be deemed

guilty of a misdemeanor and upon conviction thereof shall be fined in any sum not exceeding \$1,000."

The Department of the Army has no objection to the above-mentioned bill, provided that it is amended as hereinafter recommended.

Information now available on this incident is incomplete due to the fact that it occurred over 15 years ago, and no claim from it was ever presented. The Department of the Army has recently investigated this matter in an effort to secure as much information as possible. The statements furnished in this report were secured as a result of this investigation conducted since the introduction of the subject bill.

The following is a translation of an accident report appearing in the police records for the district of Guaynabo, P. R.:

"Policeman Salvador Maso, badge No. 5, informs that yesterday, March 24, 1942, time 3:30 p. m. and in the highway No. 2 Km. 7-6, Guaynabo, P. R., the military truck belonging to the United States Army, W-336-028, the driver unknown since he did not stop, hit Tomas Clemente Gonzalez, white, age 15, from Sabana, and a resident of Juan Domingo, Guaynabo, P. R., causing him to receive a laceration in his left ankle and bruises in the same.

"The investigation made by the informing party, together with the witnesses, Carmen Maria Gonzalez and Emilio Sevilla Gonzalez, residents of Juan Domingo, Guaynabo, P. R., shows that the accident took place in the following manner: The vehicle W-336-028 was going from Bayamon toward Fort Buchanan at a high rate of speed and Tomas Clemente Gonzalez was walking in the same direction and when reaching the scene of the accident the truck left its right lane hitting Tomas Clemente Gonzalez causing the injuries above described. Tomas Clemente Gonzalez was hospitalized in the district hospital of Bayamon.

"No action taken since the driver was a soldier."

The following are two sworn statements by Tomas Clemente (correct name of the person referred to in the subject bill is "Tomas Clemente Gonzalez"):

"I, Tomas Clemente, under oath depose:

"That my name is as stated, that I am of legal age, married, employee, and resident of Catano, P. R.

"That I was born on August 29, 1927, at Pueblo Viejo Ward, Catano, P. R., and that I am the illegitimate child of Crescencia Clemente, inasmuch as my father, Rafael Perez, died before he recognized me as his son.

"That on March 24, 1942, I suffered an accident at around 2:30 in the afternoon on Insular Road No. 2, Km. 7, Hm. 6, Guaynabo, P. R., when I was run over by a truck W-336028, of the Army of the United States of America, which ran away.

"That in said accident I lost consciousness and I could not help that on the insular police report from the Juan Domingo Ward, P. R., as well as on the records of the Bayamon District Hospital my name was registered as Tomas Clemente Gonzalez.

"That I am the same person that appears on said record or insular police report from Juan Domingo Ward of Catano and from the Bayamon District Hospital, my correct name being Tomas Clemente, as it appears on the birth certificate No. 391, which accompanies this statement and that I use as my second surname Machuca this being my mothers second sur name.

"That I give this statement of my own free will and that the above stated facts are true and of my own personal knowledge.

"And as a matter of record, I sign this document in San Juan, P. R., on this 11th day of March 1955.

"That at about 3:30 p. m. March 24, 1942, and while I was walking on the sidewalk on Highway No. 2, Km. 7, Hm. 6, Juan Domingo Ward, Guaynabo, P. R., I was run over by an Army truck No. W-336028, property of the Army of the United States of America.

"This truck that was part of a larger series of Army vehicles, tried to pass the front vehicle and due to the fact that the road was wet and slippery at the time, skidded, left the road, and ran over me causing a fracture of the left leg, multiple lacerations on the head, the face, and left side. I was immediately taken in the same vehicle to the Army dispensary of Fort Buchanan where they gave me first aid; later on was transferred to the Bayamon District Hospital, P. R., where I remained hospitalized for about 3 months and 16 days.

"When the period of hospitalization was over, I was sent home and was forced to continue the treatment for a period of about 4 years during which time I was forced to use crutches continuously and to definitely abandon school.

"A few days after the accident occurred, the Army of the United States sent a representative in the capacity of investigator to whom all pertinent data was submitted.

"Hospitalization fees were paid by the government of Puerto Rico. In that opportunity I did not lose any wages; as at that time I was a student preparing for the future; purpose and ambition that I was forced to resign and which has caused multiple troubles in my life as laborer. In different occasions I was forced to abandon my work because of illness as a result of this accident.

"I am making part of this statement, an affidavit No. 9163 (copy) [supra], where it is evident the change of name in the previous and present record and statement. [Dated June 20, 1957.]"

The following are sworn statements, dated June 20, 1957, by Miss Carmen Maria Gonzalez and Mrs. Emilia Sevilla-Gonzalez, respectively:

"That at the time and date in question, 3:30 p. m., March 24, 1942, I sent my foster brother, Tomas Clemente Gonzalez, to the grocery store. At that time the sidewalk of Road No. 2, at Km. 7, Hm. 6 was under construction. Tomas was returning from the errand at the time that a convoy of military trucks were traveling in the direction of from Bayamon toward Fort Buchanan. The last vehicle, an Army crane, tried to pass the vehicle in front and upon so doing, skidded across the road, running over Tomas and causing him multiple lacerations on the head, the face, the left side, and multiple fracture on the left leg.

"As a result of the accident Tomas was taken immediately and in the same vehicle to the Buchanan dispensary, where he was given first aid, later on was transferred to the Bayamon District Hospital where he remained for a period of 30 to 40 days.

"After he was released from the hospital he remained in bed convalescing for a period of approximately 30 days. At the end of that time he had to be operated on again on his leg. As a result of the accident Tomas never attended school.

"Question: Tell me, Miss Gonzalez, do you remember the weather condition on that day?

"Answer: It was dark, it had rained and the road was slippery.

"Question: Did Tomas have to cross the road at any time in order to get to the grocery store to run his errand?

Answer: No, sir; the grocery store was on the same sidewalk as the house.

"Question: Do you have anything further to state?

"Answer: No, sir.

"Question: Who took care of paying the medical expenses?

"Answer: Initially, the expenses were borne by the Government; thereafter we paid for same.

"Question: Approximately, what was the extent of the expenses borne by you?

"Answer: Approximately \$75.

"That I am the foster mother of Tomas Clemente Gonzalez. That on the referred-to date, March 24, 1942, and while Tomas was returning from the grocery store, was ran over by an Army truck that formed part of a bigger formation.

"As a result of the accident the boy suffered a fracture on the left leg and several lacerations on the head, the face, and on all his left side. Immediately after the accident Tomas was taken on the same vehicle to the Buchanan dispensary for first aid and later on to the Bayamon District Hospital where he remained for a little more than a month. From there he returned to my home with his leg in a cast. The plaster was changed about 3 months later and remained on 3 additional months, at the end of which it was removed permanently.

"A month later he had to continue treatment as a result of an infection on the leg.

"A few days after the accident the military authorities sent a group of soldiers for some blood transfusions. Later on the military police came to my house to investigate the accident."

On June 25, 1957, the medical records of the Bayamon District Hospital were reviewed by the medical director of the hospital. These records indicate that Tomas Clemente Gonzalez was admitted to Bayamon District Hospital on March 24, 1942, with a diagnosis of "contused lacerated wound of left ankle" and "multiple contusions of left leg." No operation was performed and the patient was discharged on May 16, 1942, as "recovered." The medical certificate from the hospital also contains the following information:

"The patient continued treatment at the outpatient department. On August 9, 1943, the patient was seen by Dr. Sabatelle. Exact words of the physician follows: 'X-ray shows an arthritis of the ankle joint at the articulation of the fibula. There is limitation of motion in the ankle joint. The primary condition at present time is an ulcer at the outer side of the ankle.'

"The patient was seen for the last time on October 1, 1943. The patient has improved of his condition."

The medical director of the Bayamon District Hospital certified as follows on July 26, 1957:

"This is to certify that in the medical records of Mr. Tomas Clemente Gonzalez there is no indication of physical disability."

There are obvious points of disagreement between the statements by Tomas Clemente and the official medical records. The medical records indicate that contrary to Mr. Clement's statement as to hospitalization for 3 months and 16 days and outpatient treatment and the

use of crutches for 4 years, that he was hospitalized for 1 month and 23 days and was discharged as recovered. In October 1943, the records reflect that he no longer suffered any ill effects from the accident.

Any claim now submitted by Mr. Clemente would be barred by the statute of limitations as this incident occurred over 15 years ago. It has been stated that, "The purpose of the statute of limitations is to require any necessary litigation to be brought within such time as the particular facts and circumstances may be proved with the utmost certainty and before adequate proof has become stale or entirely lost" (34 Am. Jr. sec. 9 (Cum. Supp. 1956)). This policy is violated in this case as the lapse of time has resulted in the present nonavailability of Army records. However, it appears reasonably certain that Tomas Clemente was struck by an Army vehicle and that he suffered some damage, which was not of a permanent nature according to the medical records. From the statement of Mr. Clemente, he incurred no expense for hospitalization as this was paid for by the government of Puerto Rico (his foster sister states that she incurred expenses of about \$75) and suffered no loss of wages. It is the opinion of the Department of the Army that an award of \$500 would adequately compensate Mr. Clemente for the injury he received in this accident. A summary of damages recovered in cases similar to this appears in 16 American Law Reports 2d 3, 276 and 16 American Law Reports 2d 393, 441. Accordingly, the Department would have no objection to the passage of this bill, provided that it be amended to pay Mr. Clemente (the reference to Mr. Gonzalez in the bill is apparently erroneous) no more than \$500.

The cost of this bill, if enacted as recommended, will be \$500.

The Bureau of the Budget has advised that it has no objection to the submission of this report.

Sincerely yours,

WILBER M. BRUCKER,
Secretary of the Army.

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